

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Jarett	Team: Team # 1	CCRB Case #: 201105740	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/23/2011 3:30 AM	Location of Incident: § 87(2)(b)	Precinct: 09	18 Mo. SOL 10/23/2012	EO SOL 10/23/2012	
Date/Time CV Reported Thu, 05/05/2011 1:37 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 05/05/2011 1:37 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Mark Vazquez	02696	933447	007 PCT
2. POM Gerald McDougall	00124	937060	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Philip Chau	23362	941539	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Mark Vazquez	Abuse: Sgt. Mark Vazquez authorized the entry and search of § 87(2)(b) § 87(2)(b) and § 87(2)(b) in Manhattan.	§ 87(2)(b)
B.SGT Mark Vazquez	Discourtesy: Sgt. Mark Vazquez spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
C.SGT Mark Vazquez	Abuse: Sgt. Mark Vazquez threatened to damage § 87(2)(b)'s property.	§ 87(2)(b)
D.SGT Mark Vazquez	Force: Sgt. Mark Vazquez pointed his gun at § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
E.POM Gerald McDougall	Force: PO Gerald McDougall pointed his gun at § 87(2)(b) and § 87(2)(b)	§ 87(2)(b)
F.SGT Mark Vazquez	Off. Language: Sgt. Mark Vazquez made remarks to § 87(2)(b) and § 87(2)(b) based upon their sexual orientation.	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

§ 87(2)(b) filed the following complaint in-person at the CCRB on May 5, 2011 (encl. 4a-c). At about 3:30 a.m. on April 23, 2011, Sgt. Mark Vazquez, PO Gerald McDougall and PO Philip Chau of the 7th Precinct went to the building in which § 87(2)(b) is a resident, § 87(2)(b) in Manhattan, while investigating a past larceny. The following allegations resulted:

Allegation A- Abuse of Authority: Sgt. Mark Vazquez authorized the entry and search of § 87(2)(b) § 87(2)(b) and § 87(2)(b) in Manhattan.

Allegation B - Discourtesy: Sgt. Mark Vazquez spoke obscenely and/or rudely to § 87(2)(b)

Allegation C- Abuse of Authority: Sgt. Mark Vazquez threatened to damage § 87(2)(b)'s property.

§ 87(2)(g)

Allegation D- Force: Sgt. Mark Vazquez pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation E- Force: PO Gerald McDougall pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation F- Offensive Language: Sgt. Mark Vazquez made remarks to § 87(2)(b) and § 87(2)(b) based upon their sexual orientation.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Although mediation was offered to § 87(2)(b) she declined. This case was reassigned to ASI Jennifer Jarett on January 12, 2012, after Inv. Wasserman's departure from the agency.

Results of Investigation

Civilian Statements:

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) black female with black hair and brown eyes who is 5'3" tall and weighs 120 pounds.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB as a walk-in complainant on May 5, 2011 (encl. 4a-c, 5c-h). At that time, she provided the CCRB with a copy of a written statement that she wrote on April 25, 2011, § 87(2)(g)

On April 23, 2011, § 87(2)(b) went for a walk around the neighborhood from 12:00 a.m. to 12:30 a.m. with her friend § 87(2)(b). § 87(2)(b) who was identified via investigation as § 87(2)(b) § 87(2)(b) and § 87(2)(b) then returned to their residence, which is located within the confines of the 9th Precinct at § 87(2)(b) in Manhattan, which is a § 87(2)(b). § 87(2)(b) went to her studio apartment, § 87(2)(b) where she watched basketball on television. § 87(2)(b) locks her door with a chain and also keeps a suitcase blocking the door, as she suffers from epileptic seizures and is worried about running out in the hallway in a state of undress during a seizure.

At about 3:30 a.m., someone unlocked § 87(2)(b)'s door from the outside with a key without saying anything, but the chain remained on. § 87(2)(b) then heard banging at the door. A male voice told her to open the door or he would kick the door down. § 87(2)(b) asked who was at the door and the male replied that it was the police and to open the door. § 87(2)(b) opened the door and asked what was going on.

As soon as § 87(2)(b) opened the door, at least two uniformed white male officers in their 30s or 40s walked inside her room, identified by the investigation as Sgt. Mark Vazquez and PO Gerard McDougall of the 7th Precinct. § 87(2)(b) could not describe or distinguish between the officers, other than stating that one was shorter than the other. A woman who works at the security desk downstairs, identified by the investigation as § 87(2)(b) was standing in the hallway. § 87(2)(b) § 87(2)(b) stated that a master key to all rooms is kept at the front desk.)

The officers accused § 87(2)(b) of hiding something and told her that she was suspected of robbing the pocketbook of an older woman, which she denied doing. The officers stated that they used the woman's cell phone to trace the pocketbook back to § 87(2)(b). The officers told § 87(2)(b) that they were provided with a description of two black females—one skinny § 87(2)(b) and one fat § 87(2)(b) and that they had video of § 87(2)(b) committing this crime. § 87(2)(b) repeatedly asked to see this video, but it was not shown to her.

Both officers started searching § 87(2)(b)'s room, opening up dresser drawers and moving items around, looking inside plastic bins and inside her closet. § 87(2)(b) asked the officers if they had a warrant and an officer told her that they did not need a warrant. § 87(2)(b) repeatedly stated that the officers could not search her possessions without a warrant. § 87(2)(b) told the officers to stop searching and to leave her room.

After no more than twenty minutes, the officers finished searching § 87(2)(b)'s room and left. § 87(2)(b) went downstairs to see what was happening. At this time, § 87(2)(b) spoke to § 87(2)(b) who told her that her room had also been searched, but that she had consented to this search. § 87(2)(b) saw an Asian male officer, identified as PO Philip Chau of the 7th Precinct, downstairs. § 87(2)(b) did not think that PO Chau was one of the officers who came to her room, but was not sure.

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) Hispanic male with brown hair and brown eyes who is 5'9" tall and weighs 130 pounds. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) whose name was provided to the investigation by § 87(2)(b) during her CCRB interview, provided a phone statement to the CCRB on May 12, 2011 (encl. 6a). § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on May 13, 2011 (encl. 6b-f). § 87(2)(g)

At about 4:00 a.m. on April 23, 2011, § 87(2)(b) was sleeping in his apartment, § 87(2)(b) in § 87(2)(b) in Manhattan, with his partner § 87(2)(b). § 87(2)(b) was awakened by hearing a crash, as the front door to his studio apartment opened and hit the door to the bathroom. Three uniformed officers then entered the apartment, identified by the investigation as Sgt. Mark Vazquez, PO Gerald McDougall and PO Philip Chau of the 7th Precinct. The officers did not knock at the door or announce themselves before entering the room.

§ 87(2)(b) described Sgt. Vazquez as a 5'8" or 5'9" Hispanic male named Vazquez with stripes on the upper shoulder of his uniform. § 87(2)(b) described PO Chau as a 5'5" Asian male. § 87(2)(b) described PO McDougall as a 5'9" white male.

The three officers had their flashlights on, as the apartment lights were off. Their guns were pointed at § 87(2)(b) and § 87(2)(b) could not remember which officers had their guns pointed at him or where on his body or on § 87(2)(b)'s body the guns were pointed. However, § 87(2)(b) was sure that the officers had their guns pointed at him and § 87(2)(b) and not the floor or ceiling. § 87(2)(b) and § 87(2)(b) sat up in bed when the officers entered the room. The officers grabbed § 87(2)(b) and § 87(2)(b) by the shoulders and placed them against a nearby wall facing the wall. One of the officers stated that they were looking for § 87(2)(b) and § 87(2)(b) stated that although he knew § 87(2)(b) as she lives in his building, she was not there.

§ 87(2)(b) heard an officer or officers open the bathroom door and slide open the shower curtain, but did not see this. Sgt. Vazquez then told § 87(2)(b) and § 87(2)(b) "Sweethearts, just relax." § 87(2)(b) was not insulted by this comment, but § 87(2)(b) found it disrespectful. An officer stated that they were looking for a stolen phone and that they had tracked the phone to § 87(2)(b) by using the phone's GPS system. An officer asked if § 87(2)(b) would tell them where the phone was and stated that otherwise they would have to search his apartment. § 87(2)(b) told the officers that they were free to search his apartment, but they left without searching the apartment. The officers were in § 87(2)(b)'s apartment for no more than five minutes.

Sgt. Vazquez, PO McDougall and PO Chau went downstairs and § 87(2)(b) went with them to the elevator to the lobby, where they questioned § 87(2)(b). One of the officers expressed to § 87(2)(b) that they had gone to § 87(2)(b) in search of § 87(2)(b) but she was not there. The officers also told § 87(2)(b) that they were looking for a skinny black female and a heavyset black female. § 87(2)(b) stated that § 87(2)(b) in fact lived in § 87(2)(b) and called her to let her know that the officers were coming to her apartment. Two officers then went upstairs to § 87(2)(b) apartment, while one of the officers stayed downstairs.

After going downstairs, § 87(2)(b) spoke to § 87(2)(b) about what had happened. She stated that she let the officers into § 87(2)(b)'s apartment with a master key because the officers stated that the hallway smelled of marijuana. § 87(2)(b) denied smoking marijuana on the night of this incident or having any marijuana in his apartment. He also denied that the hallway by his room smelled of marijuana. He noted that the residents of his building undergo regular drug tests.

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) male who refused to provide his race.

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on May 16, 2011 (encl. 7a). § 87(2)(b) was sleeping with § 87(2)(b) when he heard three hard fast knocks at the door. § 87(2)(b) got up to get the door. However, someone opened the door with a key before § 87(2)(b) got to the door.

There were two male officers, a tall white male, identified as PO McDougall, and a shorter male who was possibly Asian, identified via investigation as Sgt. Vazquez. There was also a female, identified as § 87(2)(b). § 87(2)(b) did not know which of these individuals opened the door with the key. The officers had their guns pointed at the center of § 87(2)(b)'s body. Sgt. Vazquez called § 87(2)(b) "sweetheart," which offended him, because he understood it to imply that he is gay and he does not identify himself as homosexual.

§ 87(2)(b) missed interviews scheduled at the CCRB for May 19, 2011, and June 7, 2011, without providing notice or calling to reschedule. A missed appointment letter was sent on May 19, 2011.

Victim: § 87(2)(b)

- § 87(2)(b) is a black female who was § 87(2)(b) at the time of the incident.

CCRB Testimony

On May 12, 2011, § 87(2)(b) who was known to § 87(2)(b) as § 87(2)(b) § 87(2)(b) provided the phone statement below and a follow-up phone call on March 29, 2012 (encl. 8a-b). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

At some point between 9 p.m. and 12:00 a.m. on Friday April 22, 2011, § 87(2)(b) and her friend, § 87(2)(b) went on a walk for a half hour. They stopped at § 87(2)(b) and § 87(2)(b) to talk. When § 87(2)(b) returned to § 87(2)(b) after her walk with § 87(2)(b) § 87(2)(b) she went to bed. She did not recall going to any other part of the building prior to entering her apartment.

At 4:00 a.m. on April 23, 2011, § 87(2)(b) received a call from § 87(2)(b) saying that the police were coming to her apartment. § 87(2)(b) looked out of her door and saw two uniformed officers in the third-floor hallway. An officer identified through investigation as PO Philip Chau, was described as a 5'4" tall East Asian male. § 87(2)(b) believed the officer had a Hispanic sounding last name, but the investigation determined that she likely erroneously attributed Sgt. Vazquez's name to PO Chau. PO McDougall, whose name was provided to § 87(2)(b) by § 87(2)(b) was described as a 6' tall white male. When she heard the officers outside her apartment, she had been asleep in her own room for a while, and did not believe it was possible the officers could have entered her room prior to that period without her being aware of it.

The officers nearly walked by § 87(2)(b) apartment until she addressed PO McDougall with the door cracked open. PO McDougall asked § 87(2)(b) if she was § 87(2)(b) and she said she was. The officers said someone's belongings had been stolen and asked § 87(2)(b) if they could look in her apartment. She told the officers that they could look in her apartment as she had nothing to hide and they were not going to find anything. § 87(2)(b) explained that she allowed the officers to

search her apartment because at the time she did not know that they needed a warrant to search her apartment. In her original phone statement, § 87(2)(b) stated that PO Chau searched the apartment while she spoke to PO McDougall outside of her room. § 87(2)(b) began to return to her apartment but PO McDougall told her not to, and then took § 87(2)(b) downstairs. In her follow-up phone call, she stated that the officers told her that she was not allowed to be present for the search of her apartment and made her wait downstairs in the lobby.

When § 87(2)(b) got to the lobby, § 87(2)(b) and § 87(2)(b) were already down there. They waited for 10-15 minutes. The officers returned and told § 87(2)(b) and § 87(2)(b) that they were suspects in a robbery. § 87(2)(b) started laughing as she knew this was a lie. The officers stated that § 87(2)(b) and § 87(2)(b) were caught on camera, which she also knew was not true. After pressing the officers for ten to fifteen minutes, the officers stated that a woman had her purse stolen in a club and there was an iPhone in a room, explaining that they had used a GPS feature to track the phone to that location. Eventually the officers just left. § 87(2)(b) and § 87(2)(b) were not brought outside, and no one was brought in to look at them, they just saw the police officers.

§ 87(2)(b) later found out that § 87(2)(b)'s room had been searched in § 87(2)(b)'s presence. § 87(2)(b) told § 87(2)(b) that prior to her room being searched, he had been sleeping with another male in his room when officers knocked on his door and identified themselves. The receptionist from downstairs had unlocked § 87(2)(b)'s door with a key and was with the officers, who then searched his room. The officers also placed him and the other male in the apartment against the wall and frisked them.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) Hispanic female with brown hair and brown eyes who is 5'7" tall and weighs 165 pounds. § 87(2)(b)

Front Desk Log

§ 87(2)(b) wrote several detailed entries pertaining to this incident in the front desk log for § 87(2)(b) on April 23, 2011 (encl. 9a-c). § 87(2)(g)

In the front desk log, § 87(2)(b) noted that § 87(2)(b) and § 87(2)(b) left the building at 12:27 a.m. and came back into the building at 1:03 a.m. She notes that PO Chau entered at 3:11 a.m. and exited at 3:18 a.m. At 3:30 a.m., Sgt. Vazquez and PO McDougall arrive. The officers searched the apartments in the following order: § 87(2)(b)'s ("§ 87(2)(b)" § 87(2)(b)'s, and § 87(2)(b)'s. Officer Chau then went upstairs and searched § 87(2)(b)'s ("§ 87(2)(b)" apartment and then came back downstairs and said that he did not find anything that belonged to the victim. The officers left at 4:11 a.m.

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB on June 1, 2011 (encl. 9d-i) and provided a follow-up phone statement on December 27, 2011 (see IA 79, encl. 14h). At about 3:30 a.m. on April 23, 2011, § 87(2)(b) was working at the front desk of § 87(2)(b). PO Chau entered the building and told § 87(2)(b) that the police were looking for two women who had stolen a purse at a nearby club and that the cell phone from the purse was traced to § 87(2)(b). PO Chau then left the building.

Sometime thereafter, Sgt. Mark Vazquez and PO Gerald McDougall of the 7th Precinct entered § 87(2)(b). The officers provided a description of the two females who allegedly stole the purse. One woman was heavyset and had § 87(2)(b)'s complexion (photo of § 87(2)(b) encl. 9g) and short hair, which matched the description of § 87(2)(b). The other woman was dark-skinned, wore baggy clothing and had facial piercings, which matched the description of § 87(2)(b). No other tenants matched the descriptions provided by the officers.

Sgt. Vazquez told § 87(2)(b) that he had to look at the security cameras. Sgt. Vazquez had § 87(2)(b) look at the cameras for a designated time frame, during which period § 87(2)(b) and § 87(2)(b) were the only tenants to enter or exit the building. § 87(2)(b) saw on the camera that § 87(2)(b) had a silver coffee mug in her hand; the officers said that they thought § 87(2)(b) had something shiny in her hand, but § 87(2)(b) did not see anything in her hands. Neither woman was carrying a purse on the camera. Upon viewing this footage, the officers stated that this constituted proof allowing them to enter the apartments of § 87(2)(b) and § 87(2)(b).

§ 87(2)(b) and the officers went upstairs to § 87(2)(b) room. § 87(2)(b) knocked on the door. When there was no response, Sgt. Vazquez told § 87(2)(b) to open the door using a master key, which she did. Sgt. Vazquez and PO McDougall entered the apartment, turned on the light and looked around the apartment, including under the bed, to see if § 87(2)(b) was there. § 87(2)(b) observed this from the hallway, by the threshold of the door. As § 87(2)(b) was not there, the officers and § 87(2)(b) then went to § 87(2)(b)'s room.

§ 87(2)(b) repeatedly knocked on the door, but there was initially no answer. Sgt. Vazquez told § 87(2)(b) to open the door with the master key. When § 87(2)(b) unlocked the door, she was unable to open it as the chain was on the door and there was a suitcase obstructing the entryway. § 87(2)(b) asked the officers to wait a second so that she could get dressed. Sgt. Vazquez stated, "If she doesn't open the fucking door, we're going to bang it down, we're going to break it down." Sgt. Vazquez started kicking the door, although he did not break the door. Sgt. Vazquez commented that § 87(2)(b) could be hiding the purse. § 87(2)(b) asked Sgt. Vazquez to stop kicking the door and asked § 87(2)(b) to hurry up and open the door.

§ 87(2)(b) opened the door and Sgt. Vazquez and PO McDougall entered the apartment with their guns drawn. § 87(2)(b) did not see where they were pointing their firearms. Sgt. Vazquez went by the window, where he started looking through § 87(2)(b)'s possessions, while PO McDougall looked through § 87(2)(b)'s suitcase as § 87(2)(b) sat on her bed. § 87(2)(b) was observing this search from the hallway by the threshold of the door. She asked Sgt. Vazquez, "Don't you need a warrant?" and Sgt. Vazquez replied that he did not need a warrant because of a "24-hour protocol."

§ 87(2)(b) asked what was going on and Sgt. Vazquez told her, "You know what's going on. Don't play stupid with me." While Sgt. Vazquez and PO McDougall were searching § 87(2)(b)'s room, Sgt. Vazquez repeatedly asked § 87(2)(b) "Where's the purse?" Sgt. Vazquez also asked about § 87(2)(b)'s whereabouts during the time of the theft and asked her if she wanted to go to jail. § 87(2)(b) said that she didn't know what Sgt. Vazquez was talking about and that the officers could search her room as she had nothing to hide. However, the officers had already started searching § 87(2)(b)'s room before she consented to this search. § 87(2)(b) did not hear § 87(2)(b) say anything about a search warrant.

While Sgt. Vazquez was inside § 87(2)(b)'s room, he received a call on his cell phone from an officer, whom Sgt. Vazquez stated told him that there was also a male Puerto Rican with a moustache present for the theft. § 87(2)(b) said something about § 87(2)(b) § 87(2)(b) told Sgt. Vazquez that she had not seen § 87(2)(b) enter or exit the building during her shift and that there was no need to go inside his apartment. Sgt. Vazquez stated that they had to do so and that they were authorized to do so by the 24-hour protocol.

After searching § 87(2)(b)'s room for about ten minutes, the officers ordered § 87(2)(b) to go downstairs and they proceeded to § 87(2)(b)'s room. When they arrived at the door to § 87(2)(b)'s room, § 87(2)(b) knocked on the door. Sgt. Vazquez told her that he smelled marijuana and to open the door without knocking. § 87(2)(b) also smelled marijuana in the hallway by § 87(2)(b)'s door, but in her CCRB interview noted that the smell was in the hallway directly outside of two apartments, and the smell could have been emanating from the other room. § 87(2)(b) stated that § 87(2)(b) had nothing to do with this incident and she refused to open the door. Sgt. Vazquez repeatedly told § 87(2)(b) to open the door and she eventually did so. When PO McDougall and Sgt. Vazquez entered the apartment, § 87(2)(b) was sleeping with another male, identified as § 87(2)(b).

The officers woke § 87(2)(b) and § 87(2)(b) and had § 87(2)(b) get against the wall, where either Sgt. Vazquez or PO McDougall patted him down. § 87(2)(b) did not think that they frisked § 87(2)(b). The officers did not have their guns drawn when they entered § 87(2)(b)'s apartment. Sgt. Vazquez asked § 87(2)(b) about his whereabouts during this incident, the current whereabouts of § 87(2)(b) and about the purse. After speaking to § 87(2)(b) the officers told him to go downstairs. § 87(2)(b) did not hear either officer refer to § 87(2)(b) and § 87(2)(b) as “sweethearts.”

After exiting § 87(2)(b)'s room, the officers went downstairs and checked the community room to see if § 87(2)(b) was there, but she was not. PO Chau re-entered the building, along with the woman whose purse was stolen, who was described as a 5'3" or 5'4" Asian female with long dark hair and a petite build, who was wearing high heels. This woman waited in an office downstairs, out of the view of the tenants. A bouncer from the club also came to § 87(2)(b) but did not enter the building. Neither the bouncer nor the victim ever looked at § 87(2)(b) or § 87(2)(b).

§ 87(2)(b) told the officers that § 87(2)(b) was in fact in her room. PO Chau and PO McDougall went up to § 87(2)(b) room, while Sgt. Vazquez and § 87(2)(b) stayed downstairs. When § 87(2)(b) later went upstairs, she saw § 87(2)(b) who asked her what was happening. § 87(2)(b) did not witness what happened in § 87(2)(b) room the second time the officers went there. After further questioning the tenants downstairs about what happened, the officers asked § 87(2)(b) for the tenants' information and an unknown officer took a photo of § 87(2)(b) with his cell phone camera. All three officers then left the building.

NYPD Statements:

Subject Officer: SGT. MARK VAZQUEZ

- *Sergeant Mark Vazquez is a § 87(2)(b)-old Hispanic male with brown hair and brown eyes who is 5'11" tall and weighs 175 pounds.*
- *Sgt. Vazquez worked from 9:30 p.m. on April 22, 2011, to 6:27 a.m. on April 23, 2011. Sgt. Vazquez was in uniform and working as cabaret sergeant with PO McDougall in unmarked vehicle no. § 87(2)(b) which is a black Chevrolet Impala.*

Memo Book

Sgt. Vazquez had the following memo book entries relating to this incident (encl. 10 a-c). At 2:40 a.m.: Larceny in progress at 133 Essex Street. At 4:00 a.m.: Complaint Report and two Stop and Frisk Reports filled out.

CCRB Testimony

Sgt. Vazquez was interviewed at the CCRB on August 18, 2011 (encl. 10d-f). At about 2:40 a.m. on April 23, 2011, a female complainant, identified by the complaint report completed by PO Chau as § 87(2)(b), came to the 7th Precinct stationhouse and stated that her iPhone, which had been in her bag, was stolen from the Foundation Nightclub at 133 Essex Street in Manhattan. Sgt. Vazquez was not sure if § 87(2)(b) whole purse was stolen or just her iPhone. PO Chau spoke to § 87(2)(b). Sgt. Vazquez then went to the Foundation Nightclub to see if they had any video footage of the larceny and to interview the bouncers.

The nightclub bouncers provided Sgt. Vazquez with a description of two black female suspects, one heavyset and one thin. § 87(2)(b) had not seen these individuals. Sgt. Vazquez did not know how the bouncers obtained the description of these two black females and was not sure if the bouncers stated that they saw two black females steal the iPhone. He thought that the bouncers noticed these two females leave the club at approximately the same time that § 87(2)(b) approached them to report her purse stolen. Sgt. Vazquez noted that Foundation Nightclub has a predominantly Asian clientele.

§ 87(2)(b) had an iPhone application called iPhone tracker that shows where an iPhone is located. Using the computer at the station house, they discovered that § 87(2)(b) iPhone was located at § 87(2)(b) in Manhattan. This tracker did not note where in the building the phone was located. Sgt. Vazquez and PO McDougall proceeded to § 87(2)(b) approximately 11 blocks and .9 miles away.

Sgt. Vazquez went inside § 87(2)(b) and spoke to the woman behind the front desk, identified by the investigation as § 87(2)(b). Sgt. Vazquez reviewed the security camera footage from § 87(2)(b). The video showed two females matching the description provided by the bouncers, identified by the investigation as § 87(2)(b) and § 87(2)(b) enter the building. Sgt. Vazquez did not remember exactly when they entered the building, but thought it was approximately 1:30 a.m. or 2:00 a.m. Sgt. Vazquez did not remember if § 87(2)(b) and § 87(2)(b) were carrying anything in their hands in the video footage.

Sgt. Vazquez asked § 87(2)(b) if § 87(2)(b) and § 87(2)(b) were in their rooms and she responded that they were. Sgt. Vazquez called the building administrator, identified by the investigation as § 87(2)(b), to see what the rules were for waking the tenants and conducting a show-up with the bouncer. § 87(2)(b) told Sgt. Vazquez that the administration has control over the tenants' rooms and gave Sgt. Vazquez permission to wake § 87(2)(b) and § 87(2)(b). When asked if they discussed whether he could enter the rooms, Sgt. Vazquez stated that he did not recall the specific points he discussed with § 87(2)(b). Sgt. Vazquez then went upstairs with PO McDougall and § 87(2)(b) leaving PO Chau with § 87(2)(b) in the security room downstairs. Sgt. Vazquez stated that he intended to have § 87(2)(b) and § 87(2)(b) come downstairs for a show-up; if this show-up had positive results he would then turn the matter over to the detective squad.

Sgt. Vazquez, PO McDougall and § 87(2)(b) went first to the room of a skinny black female, identified by the investigation as § 87(2)(b). Sgt. Vazquez knocked on the door and either § 87(2)(b) or § 87(2)(b) opened the door, which had a chain. Sgt. Vazquez did not direct § 87(2)(b) to open the door. § 87(2)(b) then undid the chain. Sgt. Vazquez asked § 87(2)(b) if she was in a club and she said no. Sgt. Vazquez told § 87(2)(b) that they had her on video coming into the building and asked her to come downstairs and participate in a show-up. The officers stood by the doorway without crossing the threshold of the door as § 87(2)(b) got dressed. They never entered § 87(2)(b)'s apartment or searched through her possessions.

After going to § 87(2)(b)'s apartment, § 87(2)(b) mistakenly took Sgt. Vazquez and PO McDougall to an apartment containing two males, identified by the investigation as § 87(2)(b) and § 87(2)(b). The officers knocked on the door of this apartment and had § 87(2)(b) open the door to this room using her keys. The officers did not step over the threshold into this apartment, but only stood at the door. Sgt. Vazquez did not remember if there was any smell of marijuana associated with this room. Sgt. Vazquez did not have any reason to suspect that there were any males involved in the larceny. § 87(2)(b) and § 87(2)(b) told the officers that § 87(2)(b) was upstairs and they proceeded to this apartment.

The officers next went to § 87(2)(b)'s apartment. They knocked on the door and § 87(2)(b) opened the door. When § 87(2)(b) and § 87(2)(b) came down to the lobby for a show-up, the bouncer confirmed that they were not the suspects. As the show-up had negative results, Sgt. Vazquez directed PO McDougall and PO Chau to obtain contact information for § 87(2)(b) and § 87(2)(b). Either PO McDougall or PO Chau filled out and filed Stop and Frisk Reports.

There was never any discussion of whether Sgt. Vazquez required a search warrant, as he never entered or searched any of the apartments. Sgt. Vazquez never stated that his actions were authorized by a "24-hour protocol" and has never heard of a 24-hour protocol that would authorize him to enter peoples' rooms. Sgt. Vazquez never used any profanity during this incident. He never threatened to break down the door to any apartments. Sgt. Vazquez never kicked the door to § 87(2)(b)'s apartment. He never hit or banged on the door to any of the apartments. Sgt. Vazquez never made reference to the sexuality of § 87(2)(b) and § 87(2)(b) or called them "sweethearts." He did not hear any other officer refer to them as "sweethearts." Sgt. Vazquez never told § 87(2)(b) that she could be arrested or threatened to arrest any civilians. Neither Sgt. Vazquez nor any other officer drew their firearm during this incident as there was never any reason to draw their firearms.

Subject Officer: PO GERALD McDOUGALL

- *PO Gerald McDougall is a § 87(2)(b)-old white male with brown hair and blue eyes who is 6'3" tall and weighs 230 pounds.*
- *PO McDougall worked from 9:30 p.m. on April 22, 2011, to 6:05 a.m. on April 23, 2011. PO McDougall was in uniform and assigned to conditions with Sgt. Vazquez in a marked vehicle.*

Memo Book

PO McDougall had the following memo book entries relating to this incident (encl. 11a-c). At 2:50 a.m.: Pickup of a larceny in progress at 133 Essex Street. At 5:00 a.m.: Complaint report by PO Chau and two UF-250s completed.

CCRB Testimony

PO McDougall was interviewed at the CCRB on August 19, 2011 (encl. 11d-f). § 87(2)(g)

PO McDougall stated that § 87(2)(b) § 87(2)(b) whose iPhone was stolen, provided the descriptions of the two female perpetrators, initially stating he did not know how she obtained this information, and later stating that he believed § 87(2)(b) § 87(2)(b) actually saw them.

PO McDougall stated that either § 87(2)(b) or § 87(2)(b) was carrying a handbag on the surveillance video from § 87(2)(b) shown to the officers by § 87(2)(b). PO McDougall did not know if this handbag matched the description of § 87(2)(b) § 87(2)(b) stolen purse. He noted that it was hard to see the surveillance video. PO McDougall stated that he thought that § 87(2)(b) opened one of the apartment doors at some point, but he was not sure when. He noted that § 87(2)(b) § 87(2)(b) had keys to all of the apartments.

The officers briefly spoke to § 87(2)(b) at her apartment and explained what was happening. § 87(2)(b) § 87(2)(b) asked if she could get dressed and the officers let her do so. SGT Vazquez and PO McDougall either took one step into the apartment or remained at the threshold of the door as § 87(2)(b) § 87(2)(b) put her shoes on. They were watching her to make sure that she did not grab anything.

§ 87(2)(b) did not mistakenly take the officers to § 87(2)(b)'s room, but took them there because she believed § 87(2)(b) might have been there. The officers asked § 87(2)(b) and § 87(2)(b) if they knew where § 87(2)(b) was, and one of the males said that § 87(2)(b) was in her room.

PO McDougall did not recall if § 87(2)(b) opened the door to § 87(2)(b) room the first time that they went to her room, but he did not think that she did so. When PO McDougall and SGT Vazquez went to § 87(2)(b) room a second time, she was present. PO McDougall did not recall the details of the interaction with § 87(2)(b) but stated that she eventually went downstairs. PO McDougall did not believe that he or SGT Vazquez entered § 87(2)(b) room, but was not sure.

PO McDougall never searched any rooms and did not think that SGT Vazquez searched any rooms. The bouncers from 133 Essex Street never came to § 87(2)(b) to view any possible perpetrators. PO McDougall thought that a show-up was conducted, but was not sure. At the conclusion of this incident, PO McDougall filled out Stop and Frisk Reports for § 87(2)(b) and § 87(2)(b) and filed them at the 7th Precinct.

Subject Officer: PO PHILLIP CHAU

- *PO Philip Chau is a § 87(2)(b)-old Asian male with black hair and brown eyes who is 5'4" tall and weighs 160 pounds.*
- *PO Chau worked from 9:30 p.m. on April 22, 2011, to 6:05 a.m. on April 23, 2011. PO Chau was in uniform and was assigned to quality of life with PO Bernstein in an unmarked black vehicle.*

Memo Book

PO Chau had the following memo book entries relating to this incident (encl. 12a-d). At 2:15 a.m.: Pick up of past larceny at stationhouse. Went to § 87(2)(b) and § 87(2)(b) at § 87(2)(b). Spoke to § 87(2)(b). At 5:00 a.m.: Filled out complaint report and lost/stolen property form.

Complaint Report

PO Chau filled out a UF-61 complaint report for a grand larceny that occurred inside the Foundation night club at 1:00 a.m. on April 23, 2011 and was reported at 4:30 a.m. (encl. 12e-f). The report states that § 87(2)(b) placed her silver purse on a bench where her friends were sitting. § 87(2)(b) got up to dance and when she returned to the bench, she noticed that her purse was taken by unknown people. There were “cameras at location.” A canvass was conducted with negative results. “Mobile Me” application on the phone showed the iPhone at § 87(2)(b) and § 87(2)(b). Det. Oliver notified nightwatch and a lost/stolen property form was filled out.

CCRB Testimony

PO Chau was interviewed at the CCRB on August 19, 2011 (encl. 12g-h). § 87(2)(g)

When PO Chau ran the computerized iPhone tracker application, it tracked § 87(2)(b) iPhone to § 87(2)(b) and § 87(2)(b). The only building located at that corner was § 87(2)(b). PO Chau stated that the bouncers at the club did not provide a physical description of possible perpetrators of the larceny.

PO Bernstein stayed in the car while PO Chau, PO McDougall and Sgt. Vazquez went inside § 87(2)(b). PO Chau spoke to the receptionist, identified via investigation as § 87(2)(b), introducing himself. After speaking with § 87(2)(b), PO Chau went outside with § 87(2)(b) who was extremely upset, and tried to calm her down.

PO Chau remained downstairs with § 87(2)(b) and § 87(2)(b) and never went upstairs. PO Chau did not know where PO McDougall and Sgt. Vazquez went while he was waiting downstairs. He did not speak to anyone from § 87(2)(b) other than § 87(2)(b) and did not conduct any investigation at this location. He was not aware of what steps, if any, PO McDougall and Sgt. Vazquez took to investigate the stolen iPhone and did not know if they entered or searched any apartments.

NYPD Documents

Stop, Question, and Frisk logs

The 9th Precinct Stop, Question, and Frisk Report log did not have anything documenting this incident (encl. 13a-b). The request to the 7th Precinct regarding any Stop, Question, and Frisk Reports documenting this incident had negative results (encl. 16h).

Other Evidence

According to Google maps, the distance between the club and § 87(2)(b) is .9 miles and approximately eleven blocks (encl. 1qq-rr)

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) had not filed a Notice of Claim with the City of New York as of December 2, 2011, with regard to this incident (encl. 15j).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■

Civilian CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 3a-d).

Subject Officer CCRB Histories

- Sgt. Vazquez has been a member of the service for eight years and there are no substantiated CCRB allegations against him (encl. 2a-b).
- PO McDougall has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2c).

Conclusion

Identification of Subject Officers

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that all three officers entered his apartment with their guns pointed at him and

§ 87(2)(b) § 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: Sgt. Mark Vazquez authorized the entry and search of § 87(2)(b) § 87(2)(b) and § 87(2)(b) in Manhattan.

§ 87(2)(b) testified that on April 23, 2011 she was working at the front desk of § 87(2)(b) when Sgt. Vazquez and PO McDougall entered the building. Sgt. Vazquez and PO McDougall provided § 87(2)(b) with a description of two females that had stolen a purse at a nearby club. One of the females was described as heavyset with § 87(2)(b)'s complexion and short hair. § 87(2)(b) indicated that this description matched that of resident § 87(2)(b). The other female was described as dark-skinned, wore baggy clothing and had facial piercings. § 87(2)(b) indicated that this description matched that of resident, § 87(2)(b). According to

Google Maps, the nightclub is approximately 17 minutes walking distance away from § 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED] stated that she then showed Sgt. Vazquez and PO McDougall video surveillance footage which depicted residents § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] exiting and later re-entering the building. After viewing the footage, Sgt. Vazquez told § 87(2)(b) [REDACTED] that a “24-hour protocol” permitted him to enter various apartments in the building. § 87(2)(b) [REDACTED] testified that she then escorted Sgt. Vazquez and PO McDougall to § 87(2)(b) [REDACTED]’s apartment where she opened the front door with a master key at Sgt. Vazquez’s direction. § 87(2)(b) [REDACTED] stated that she stood in the hallway by the threshold of the door as Sgt. Vazquez and PO McDougall looked around § 87(2)(b) [REDACTED] apartment including underneath the bed. Sgt. Vazquez and PO McDougall determined that § 87(2)(b) [REDACTED] was not inside the apartment and then proceeded to § 87(2)(b) [REDACTED]’s apartment. § 87(2)(b) [REDACTED] testified that she knocked on § 87(2)(b) [REDACTED]’s door and received no response. She then unlocked § 87(2)(b) [REDACTED]’s door with a master key but was unable to open the door as the interior lock chain was on the door and a suitcase was obstructing the entryway .

§ 87(2)(b) [REDACTED] stated that after a short while, § 87(2)(b) [REDACTED] opened the door and Sgt. Vazquez and PO McDougall entered her apartment with their guns drawn. § 87(2)(b) [REDACTED] observed Sgt. Vazquez search through § 87(2)(b) [REDACTED]’s possessions as PO McDougall searched through § 87(2)(b) [REDACTED]’s suitcase. § 87(2)(b) [REDACTED] heard § 87(2)(b) [REDACTED] question Sgt. Vazquez and PO McDougall as to what was going on. She heard Sgt. Vazquez reply “You know what is going on, don’t play stupid with me” and repeatedly ask § 87(2)(b) [REDACTED] about the location of the stolen purse. As Sgt. Vazquez and PO McDougall searched § 87(2)(b) [REDACTED]’s apartment, § 87(2)(b) [REDACTED] heard § 87(2)(b) [REDACTED] tell Sgt. Vazquez and PO McDougall that they could search her apartment as she had nothing to hide.

According to § 87(2)(b) [REDACTED] while inside § 87(2)(b) [REDACTED]’s apartment, Sgt. Vazquez received a call from an officer on his cellular phone. The officer informed Sgt. Vazquez that a Puerto Rican male with a moustache was present at the nightclub when the phone was stolen. § 87(2)(b) [REDACTED] then heard § 87(2)(b) [REDACTED] mention the name of resident § 87(2)(b) [REDACTED]. Sgt. Vazquez then instructed § 87(2)(b) [REDACTED] to escort him to § 87(2)(b) [REDACTED]’s apartment. Upon arriving at § 87(2)(b) [REDACTED]’s apartment, § 87(2)(b) [REDACTED] opened the front door with a master key at Sgt. Vazquez’s direction. Sgt. Vazquez and PO McDougall then entered § 87(2)(b) [REDACTED]’s apartment where § 87(2)(b) [REDACTED] was asleep in bed with another male identified as § 87(2)(b) [REDACTED]. Sgt. Vazquez and PO McDougall instructed § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] to stand against a wall where either Sgt. Vazquez or PO McDougall patted them down.

In addition to her CCRB testimony, § 87(2)(b) [REDACTED] wrote several detailed log entries for the § 87(2)(b) [REDACTED] front desk log on April 23, 2011. The log indicates that on April 23, 2011, § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED] left the building at 12:27 a.m. and returned at 1:03 a.m. The log further indicates that Sgt. Vazquez and PO McDougall searched § 87(2)(b) [REDACTED]’s and § 87(2)(b) [REDACTED]’s apartments.

§ 87(2)(g) [REDACTED]
Specifically, § 87(2)(b) [REDACTED] stated that after returning from a walk with § 87(2)(b) [REDACTED] Sgt. Vazquez and PO McDougall entered her apartment and began opening her dresser drawers, moving items around, looking inside her plastic bins and inside of her closet. § 87(2)(b) [REDACTED] asked Sgt. Vazquez and PO McDougall if they had a warrant and repeatedly told them that they could not search her possessions without a warrant and directed them to leave her apartment. § 87(2)(b) [REDACTED] testified that Sgt. Vazquez and PO McDougall repeatedly accused her of stealing and hiding a purse. § 87(2)(b) [REDACTED]

§ 87(2)(b) also indicated in a phone interview that she and § 87(2)(b) left the building earlier that evening for a walk.

§ 87(2)(b) indicated that while he was asleep in bed with his partner, § 87(2)(b) he heard his front door open and three officers entered his apartment without knocking. The officers placed § 87(2)(b) and § 87(2)(b) against a wall. § 87(2)(b) testified that as he was standing against the wall, he heard someone moving his shower curtain. § 87(2)(g)

Sgt. Vazquez, PO McDougall and PO Chau consistently stated that while at the station house, a civilian, § 87(2)(b) came in to report that her iPhone had been stolen at a nearby club. According to the complaint report, § 87(2)(b) phone was stolen at 1:00 a.m. Sgt. Vazquez, PO McDougall and PO Chau consistently stated that they ran a tracking device which traced § 87(2)(b) iPhone to § 87(2)(b). Sgt. Vazquez and PO McDougall stated that the application traced the phone specifically to § 87(2)(b). PO Chau, however, stated that the tracker traced the phone to the corner of § 87(2)(b) and § 87(2)(b) with § 87(2)(b) being the only building at that location.

Additionally, Sgt. Vazquez, PO McDougall and PO Chau consistently stated that after tracing the phone to § 87(2)(b), they then went to the nightclub where § 87(2)(b) phone was stolen. According to Sgt. Vazquez, the bouncers at the nightclub described the perpetrators as two black females, one heavyset and one thin. Sgt. Vazquez was unsure as to whether the bouncers witnessed the females steal § 87(2)(b) purse or if they merely observed them leave the club at approximately the same time that § 87(2)(b) reported her purse stolen. PO Chau stated that the bouncers did not provide a description of the perpetrators and PO McDougall thought that § 87(2)(b) provided the description of the perpetrators.

Sgt. Vazquez and PO McDougall consistently stated that they knocked on the doors, but did not enter § 87(2)(b) and § 87(2)(b)'s apartments. PO Chau stated that he remained downstairs or outside of the building during the incident.

§ 87(2)(g)

Probable cause requires proof sufficient to warrant a reasonable belief that an offense has been or is being committed or that evidence of a crime may be found in certain place. People v. Bigelow, 66 N.Y.2d 417, 423 (1985) (Encl. 1a-1i). If probable cause is based upon the hearsay statement of an informant, it must be established that the informant is reliable and had a sufficient factual basis for his or her knowledge. People v. Voner, 74 A.D.3d 1371, 1373 (App. Div. 2d Dep't. 2010) (Encl. 1x-bb); People v. Parris, 83 N.Y.2d 342, 350 (1994) (Encl. 1j – 1s). Probable cause alone, however, does not justify a warrantless entry into a person's home. People v. Bero, 139 A.D.2d 581, 584 (App. Div. 2d Dep't. 1988) (citing Payton v. New York, 445 U.S. 573) (Encl. 1nn-oo). A warrantless entry into a person's home may be authorized when in addition to probable cause exigent circumstances exist. Id.

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegation B— Discourtesy: Sgt. Mark Vazquez spoke obscenely and/or rudely to § 87(2)(b) [REDACTED]

Allegation C— Abuse of Authority: Sgt. Mark Vazquez threatened to damage § 87(2)(b) [REDACTED]
s property.

§ 87(2) § 87(2)(b) [REDACTED] testified that when Sgt. Vazquez and PO McDougall were unable to enter § 87(2) [REDACTED]
s apartment because of the interior chain lock and the suitcase obstructing the entryway, Sgt. Vazquez stated “If she doesn’t open the fucking door, we’re going to bang it down, we’re

going to break it down.” § 87(2)(b) testified that prior to opening the front door, she heard a male voice state that if she did not open the door, he would kick it down.

§ 87(2)(g)

Patrol Guide 203-09 requires that officers be courteous and respectful when interacting with the public (Encl. 1ss). Courts have consistently affirmed that an officer may not use profanity gratuitously, or to intimate or retaliate or show a lack of respect for a citizen, unless such profanity is used to secure a civilian's cooperation or for other legitimate law enforcement ends. Police Department v. Dukes, OATH Index Nos. 1137-39/00 (Apr. 26, 2000) (Encl. 1tt-bbb).

§ 87(2)(g)

Allegation D- Force: Sgt. Mark Vazquez pointed his gun at § 87(2)(b) and § 87(2)(b)

Allegation E- Force: PO Gerald McDougall pointed his gun at § 87(2)(b) and § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) and § 87(2)(b) testified that officers had their guns drawn when they entered the apartment. § 87(2)(b) could not recall where on his or § 87(2)(b)'s body the officers pointed the guns. § 87(2)(b) indicated that the officers had their guns pointed at the center of his body. § 87(2)(b) however, testified that Sgt. Vazquez and PO McDougall drew their guns when they entered § 87(2)(b)'s apartment. § 87(2)(b) did not mention that Sgt. Vazquez and PO McDougall drew their guns when they entered § 87(2)(b)'s apartment. Sgt. Vazquez and PO McDougall denied drawing their guns at any point. § 87(2)(g)

Allegation F- Sgt. Mark Vazquez made remarks to § 87(2)(b) and § 87(2)(b) based upon their sexual orientation.

§ 87(2)(b) and § 87(2)(b) consistently stated that Sgt. Vazquez referred to them as sweethearts, which § 87(2)(b) found offensive. § 87(2)(b) however, when asked if she heard Sgt. Vazquez refer to § 87(2)(b) or § 87(2)(b) as “sweethearts” said no. Sgt. Vazquez and PO McDougall denied calling or hearing § 87(2)(b) or § 87(2)(b) called “sweethearts.” § 87(2)(g)

§ 87(2)(g), § 87(4-b)

[REDACTED]

Team: 1

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date